

TTAB

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In re Application Serial No. 76/086,290;
Filed July 11, 2000;
In the name of Custom Golf Sales, Inc.;
Published in the Official Gazette, February 26, 2002;

RANDY N. GRAHAM,)
Opposer,)
)
v.)
)
CUSTOM GOLF SALES, INC.,)
Applicant.)

Opposition No. 91151470

(Opposer's File No. 26647.001)
(Applicant's File No. 2150-1/020342)

December 19, 2002

BOX TTAB - NO FEE
Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA 22202-3513

12-19-2002
U.S. Patent & TMO/TM Mail Room
#36

REQUEST FOR WITHDRAWAL AS OPPOSER'S COUNSEL
UNDER 37 C.F.R. § 10.40(c)

Sir:

James M. Harrington, Clifford R. Jarrett, and Kennedy Covington Lobdell & Hickman, LLP, attorneys for Opposer Randy N. Graham, hereby request permission to withdraw as Opposer's Counsel in the above-captioned Opposition under the terms provided in 37 C.F.R. § 10.40(c), and as grounds for withdrawal said Attorneys state as follows:

1. Opposer has failed to pay as agreed one or more bills rendered by Attorneys for an unreasonable period of time and has further failed to honor an agreement to pay a retainer in advance of the performance of legal services. The named Opposer and his business partner, Mr. James Quick, have agreed to be responsible for payment of outstanding invoices.

2. To wit, on or about May 13, 2002, Attorneys rendered an invoice in a net amount totaling \$3,585.23 for fees and costs incurred during preparation of the Notice of Opposition in the above-titled action, which invoice has not been paid to date.

3. Further, on or about June 17, 2002, Attorneys rendered an invoice in an amount totaling \$81.40 in additional fees and costs associated with the representation, which invoice has not been paid to date.

4. Further, on or about August 19, 2002, Attorneys rendered an invoice in an amount totaling \$196.90 in additional fees and costs associated with the representation, which invoice has not been paid to date.

5. Despite numerous telephone calls and letters, despite Attorneys' offer to discount their services, and despite Attorneys' good-faith forbearance from seeking withdrawal upon promises of payment, Opposer and Mr. Quick have failed to pay toward the outstanding invoices.

6. Attorneys have advanced substantial hard costs in pursuing this action on promises of prompt payment of outstanding invoices, and have devoted substantial time and effort toward pursuing this action, which costs, time, and effort remain uncompensated.

7. On or about October 10, 2002, Attorney James M. Harrington mailed a letter to Opposer and to Mr. Quick notifying them of Attorneys' intent to seek withdrawal if outstanding invoices were to remain unpaid.

8. During the month of November, Mr. Quick notified Attorneys of an objection to the amounts invoiced and requested a reduction. Attorneys offered to discount Opposer's balance to \$3,000.00, which offer was counteroffered by Mr. Quick at \$2,000.00. In a telephone call on December 13, 2002, confirmed by a letter, Attorneys agreed to reduce the outstanding balance to \$2,000.00, provided payment was made before December 18, 2002.

9. During November, Attorneys received Applicant's discovery requests. Promptly upon receipt, and again in the telephone conference of December 13, Attorneys further advised Mr. Quick of the need to respond to Applicant's discovery requests, and that the cost of such responses, of obtaining a reset of the discovery dates, and of drafting and promulgating Opposer's own discovery requests would total approximately \$2,000.00 to \$2,500.00. Mr. Quick agreed to pay these additional costs before December 18, 2002.

10. On December 13, 2002, Attorney James M. Harrington mailed a letter to Mr. Quick's Post Office Box address (per his request) via Express Mail and to Opposer's street address via FedEx Express, confirming the terms of the agreement reached that day and specifying a payment deadline of December 18, 2002. In that letter, Attorneys again notified Opposer of their intent to seek withdrawal if the amounts specified were not paid as agreed. The payment deadline has now passed without payment.

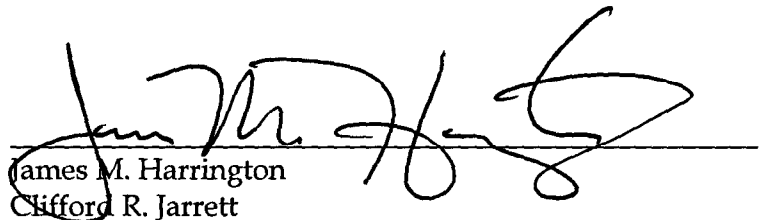
11. Attorneys have sought the consent of the Applicant to enlarge the time for response to Applicant's discovery requests, so that Opposer would have sufficient time to hire new counsel to assist in formulating responses, and to reset the discovery period to permit Opposer, once he has employed new counsel, to conduct discovery. That consent was graciously granted, and a motion to that effect is being filed contemporaneously herewith.

12. All fees paid in advance to Attorneys have been earned.

13. All papers and property that relate to the proceeding and to which Opposer is entitled have been delivered to Opposer by depositing said papers and property with FedEx Express in a carton addressed to Opposer, prepaid by Attorneys. All reasonable steps have been taken to ensure that Opposer's rights are not prejudiced by the withdrawal.

For the foregoing reasons, the undersigned Attorneys hereby request permission to withdraw as counsel to Opposer in the above-captioned proceeding.

Respectfully submitted,



James M. Harrington
Clifford R. Jarrett
KENNEDY COVINGTON LOBDELL & HICKMAN, LLP
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214 North Tryon Street
Charlotte, North Carolina 28202
(704) 331-7541
Attorneys for Opposer

CERTIFICATE OF EXPRESS MAILING

EXPRESS MAIL MAILING LABEL NO. EV203561274US

DATE OF DEPOSIT: December 19, 2002

I hereby certify that this paper and fees are being deposited on the date indicated above with the United States Postal Service as "Express Mail Post Office To Addressee," under 37 CFR § 1.10, addressed to: BOX TTAB FEE, Commissioner For Trademarks, 2900 Crystal Drive, Arlington, VA 22202-3514

TYPED NAME: WENDY PULLEN

SIGNATURE Wendy Pullen

CERTIFICATE OF SERVICE

This is to certify that I have this day served the Applicant and the Opposer in the foregoing matter with a true and correct copy of this Request by depositing a copy thereof in the United States Mail in a properly addressed envelope with adequate postage thereon.

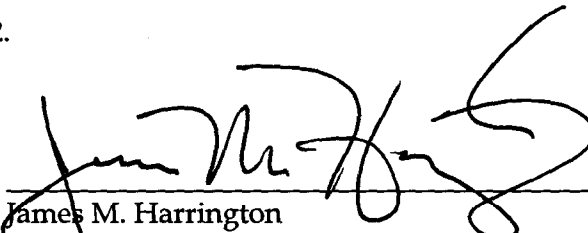
To Applicant, to its counsel of record:

Ralph H. Dougherty
Gregory R. Everman
Dougherty, Clements & Hofer
6230 Fairview Road
Suite 400
Charlotte, North Carolina 28210

To Opposer:

Randy N. Graham
4545 S. New Hope Road
Gastonia, North Carolina 28056

This, the 19th day of December, 2002.



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